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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,106	05/09/2001	Gerhard Frisch	514413-3874	5020

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EXAMINER
PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 05/20/2003 12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/852,106	Applicant(s) Frisch et al
	Examiner Alton Pryor	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Mar 6, 2003*.

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-8 and 13-24* is/are pending in the application.

4a) Of the above, claim(s) *8 and 18* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-7, 13, 14, 17, and 19-24* is/are rejected.

7) ☒ Claim(s) *15 and 16* is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Claim Objection

Claims 15 and 16 depend from canceled claim 9. Please make corrections.

Claim Rejection under 35 U.S.C. 102(b)

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6,17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 6,17 recite the broad recitation organic solvent,

polymer molecular weight, and functional groups, and the claims also recite preferred polar solvents, preferred MW and ratio ranges, preferred functional groups which are narrower statements of the ranges/limitations. Examiner suggests that Applicant **delete "preferably" language** from the claims

4. The phrase "which are known per se" in claims 17 is a relative term which renders the claim indefinite. The phrase "which are known per se" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Please explain this phrase. Claim 17 is unclear to the Examiner. Claim 1 from which claim 17 depends is to a combination. However, claim 17 prepares a formulation rather than the combination of claim 1. Is claim 17 preparing a formulation as well as a combination? Examiner suggests that Applicant **deletes "which known per se language"** from the claim.

Claim Rejection under 35 U.S.C. 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4,6,7,13,14,17,21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Frisch et al (US 5,238,904; 8/24/93) on record. Frisch discloses a method to controlling

undesirable plant growth comprising applying to the plant a composition comprising water, glufosinate (herbicide), another herbicide and ligninsulfonate. See abstract, column 2 line 26-column 4 line 13. It is inherent that the composition / method would posses cationic - anionic electrostatic interactions.

It is also inherent that the composition application to plants would suppress antagonistic interactions and increase crop selectivity.

Claim Rejection under 35 U.S.C. 103(a)

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5,19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frisch et al above as applied to claims 1-4,6,7,13,14,17,21-24 above. See 35 U.S.C. 102(b) rejection above. Frisch teaches all that is recited in claims 5,19,20 except for the composition / method comprising instant amounts and ratios. One having ordinary skill in the art would have been expected to determine the optimum amounts / ratios of ingredients through routine experimentation. One would have been motivated to do this in order to develop a composition / method that would have been effective in controlling undesirable plant growth.

Election Requirement

Applicant's elected invention comprising glufosinate, lignin sulfonate, urea, oil, and a surfactant is allowable. This invention is not taught or suggested by the prior art. Applicant argument is for a restriction requirement; whereas, Examiner only issued an election requirement. Once Applicant overcomes the art rejection of record, Examiner will continue the examination process.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Alton Pryor ALTON N. PRYOR PRIMARY EXAMINER

Primary Examiner, AU 1616

5/18/03